IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: 　　Senaka Balasuriya	Examiner: Yves Dalencourt
Application No.: 10/034,794	Group Art Unit: 2457
Filed: December 28, 2001	Docket No.: 33692.01.0023
For:　MULTI-MODAL 　　　COMMUNICATION USING A 　　　SESSION SPECIFIC PROXY 　　　SERVER	

APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

Dear Sir:

　　Appellant submits this brief further to the Pre-Appeal Brief Request for Review filed

May 19, 2009, and the Notice of Panel Decision from Pre-Appeal Brief Review dated August 7,

2009 in the above-identified application.　Appellant respectfully petitions for a three month

extension of time.

1

TABLE OF CONTENTS

I.   <u>REAL PARTY IN INTEREST</u>

Motorola, Inc. is the real party in interest in this appeal by virtue of an executed Assignment from the named Inventors of their entire interest to Motorola, Inc.. The Assignment evincing such ownership interest was recorded on December 28, 2001, in the United States Patent and Trademark Office at Reel 012423, Frame 0942.

II.   RELATED APPEALS AND INTERFERENCES

To Appellant's knowledge, there are no related Appeals or Interferences filed, pending, or decided.

4

III.   <u>STATUS OF CLAIMS</u>

Claims 1-3, 6, 19-21, 26, 28-30, 35 and 36 are pending. Claims 1-3, 6, 19-21, 26 and 28-30 stand rejected. Claims 35 and 36 are allowed. The originally filed Application contained claims 1-34. Claims 7-18, 22-25, 27 and 31-34 were canceled during prosecution of the present application. Claims 4 and 5 were allowed and written in independent form as claims 35 and 36 via amendment filed with this Appeal Brief. Claims 1-4, 6, 19 and 26 were amended during prosecution of the present application. Claims 1-3, 6, 19-21, 26 and 28-30 are being appealed. Of the pending appealed claims, 1, 19 and 26 are independent.

IV.   STATUS OF AMENDMENTS

A Pre-Appeal Brief Request for Review was filed on May 19, 2009, in response to the Final Office Action mailed on February 19, 2009. Amendments were made to the claims subsequent to the Final Office Action in an amendment filed with this Appeal Brief (claims 4 and 5 were allowed and written in independent form as claims 35 and 36). The claims listed in Appendix A reflect the claims after the amendment filed with this Appeal Brief.

V.   SUMMARY OF CLAIMED SUBJECT MATTER

An emerging area of technology involving terminal devices, such as handheld devices, mobile phones, laptops, PDAs, internet appliances, desktop computers, or other suitable devices, is the application of multi-modal interaction for access to information and services. Typically resident on the terminal device is at least one browser, wherein the browser is a program executing on a processor which allows the user to enter fetch requests, receive fetched information, and navigate through content servers via internal, e.g. intranet, or external, e.g. internet, connections, and present information to the user. The browser may be a graphical browser, voice browser, JAVA® based application, software program application, or any other suitable browser as recognized by one of ordinary skill in the art. (Specifications, page 2, lns. 11-21.) More specifically, the user may submit an information fetch request in one or more modalities, such as speaking a fetch request into a microphone, and the user may then receive the fetched information in either the first mode (e.g., text) or a second mode (e.g., voice), such as viewing the information on a display screen or hearing the fetched information. (Specifications, page 3, lns. 4-8.)

Typically, a computer resident on a network fetches the information request through a proxy server commonly known as a firewall server. Wherein, a proxy server is a computer having a proxy, an application running on a gateway that relays packets of information between a trusted client, such as the networked computer, and an untrusted host, such as the third party content server. The proxy server may act as the intermediate memory location for the multi-modal system. (Specifications, page 4, lns. 11-17.)

Generally, a browser has a static proxy address that is independent of a particular session. When the browser is first installed on a terminal, computer or other device, a browser proxy address is assigned and manually inserted therein, via a graphical user interface (GUI).

7

Moreover, the proxy address may be manually changed by a user via a GUI, after installation. Typically, the proxy address refers to a specific proxy server, such as a firewall server, allowing a user to safely access information from the various content servers. Therefore, whenever a browser receives a URI request, that request is transmitted through the static proxy server. (Specifications, page 4, lns. 18-23 - page 5, lns. 1-4.)

Concurrent with the emergence of multi-modal technology, concerns arise regarding different types of browsers (e.g. graphical, voice, etc.) seeking information from a variety of different content servers. If a first browser, such as a graphical browser, in the terminal device retrieves a specific set of information, it is important to synchronize the second browser, such as a voice browser on the network device, of the first browser's fetch request and successful retrieval. If the different browsers are not synchronized properly, a user may encounter problems when switching between browsers or when using multiple browsers to input commands or fetch requests. (Specifications, page 5, lns. 5-14.) For example, if the browser on a mobile phone has a statically assigned proxy server that is located in Chicago, but the mobile phone is being used in Atlanta, then the information fetch request from the browser has to be sent through the proxy server located in Chicago and then routed back to Atlanta. This may reduce system efficiency. (Specifications, page 5, lns. 22-23 - page 6, lns. 1-4.)

Further illustrated in FIG. 3 of Appellants' Specification (below), the multi-modal session proxy server 226 is operably coupled to a controller 236, which is operably coupled to a load balancer 238. As recognized by one of ordinary skill in the art, the controller 236 and load balancer 238 may also be resident within the multi-modal session proxy server 226 (see FIG. 4 below). The load balancer 238, by way of example, determines the available bandwidth for the plurality of multi-modal session proxy servers 226. Based on information from the load balancer

8

238, the controller 236, determines which multi-modal session proxy server 226 is used for the particular multi-modal session. The browser is provided the session proxy identifier and composes it with its own browser proxy ID 140 and overwrites its proxy ID to effect dynamic per-session multi-modal proxy server control (Specification, pg. 14, lns. 3-22). The controller 236 determines the multi-modal session proxy server 226 based on a variety of factors, including, but not limited to, available bandwidth and location of the proxy servers. (Specifications, page 18, lns. 1-19.)

9

FIG. 3
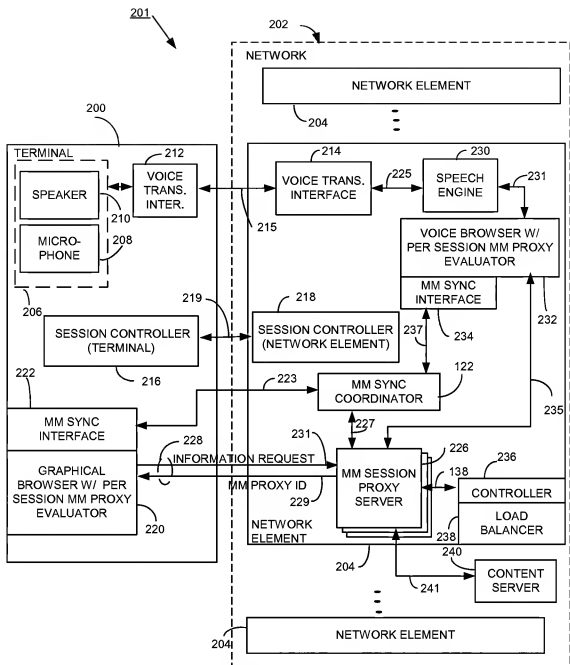
As disclosed, multiple browsers, such as 220 and 232, in a multi-modal session are

synchronized, through the multi-modal proxy server 226. In conjunction with the multi-modal

synchronization coordinator 122 and the multi-modal synchronization interface, 222 and 224, for

each of the plurality of browsers with per session multi-modal proxy evaluators 220, 232, the

10

system 201 can efficiently provide information requests to a plurality of third party content servers, such as 240. The system provides for a session specific multi-modal proxy server to be determined on a per session basis, thereupon providing an improved information transfer system via an optimum multi-modal session proxy server with optimum multi-modal session proxy server location and bandwidth capabilities, among other things. (Specifications, page 20, lns. 10-21.)

During a session initiation, the controllers between the various proxies provide for the determination of the multi-modal session proxy. The controller 236 then provides the multi-modal session proxy identifier 294 to the browsers 104, 112 for evaluation to potentially update the browser proxy identifiers corresponding to the determined multi-modal session specific proxy. Once a multi-modal session proxy server is designated and the browser proxy identifiers having been evaluated in view of the multi-modal session proxy identifier, the user may provide information requests 296 similar to the system of FIG. 3 through the browsers with per session multi-modal proxy evaluators 104 and 112. (Specification, page 22, lns. 13-22.)

FIG. 4 (below) illustrates another embodiment wherein each of the multi-modal session proxy servers contains a controller and a load balancer. (Page 18, lns. 20-24). As shown, each of the multi-modal session proxy servers 276, 278 and 280 include a respective controller 282, 286 and 290 and a corresponding load balancer 284, 288 and 292. Each load balancer provides each respective controller the requisite bandwidth availability information before the multi-modal session proxy server. Each of the controllers from the various multi-modal proxy servers interact with each other to determine the optimum session specific multi-modal session proxy server. This is done prior to the session specific multi-modal proxy being determined. (Specification, pg. 20, lns. 22-23). Similar to FIG. 3, the controller determines from the load

11

balancer the amount of available bandwidth for the multi-modal session proxy server. (Specification, pg. 22, lns. 5-10).
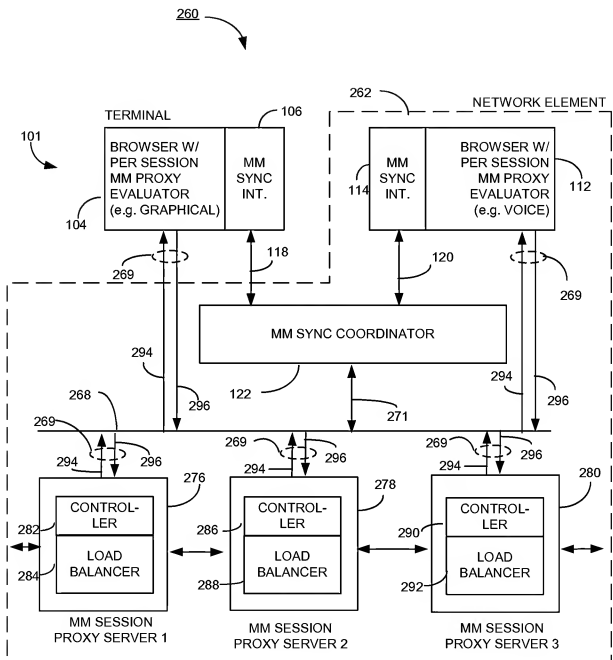

FIG. 4

Once a controller has determined the identifier for the multi-modal session proxy server, the controller provides the multi-modal session proxy identifier to the browsers for evaluation to potentially update the browser proxy identifiers corresponding to the determined multi-modal session specific proxy. (Specification, pg. 22, lns. 13-18).

It will be understood that the below references are merely examples and other support may be found in the Specification as filed. As to claim 1, an apparatus 204 includes a controller 236 operative to select one or more of a plurality of multi-modal session proxy servers 226. (FIGs. 3, 4, Specification, pg. 18, lns.7-19). The plurality of multi-modal session proxy servers 226 each have a proxy address such as amend proxy ID 229. The controller 236 determines, on a per session basis, which of the plurality of multi-modal session proxy identifiers 229 associated with each of the multi-modal session proxy servers 226 represents the proxy address of a selected multi-modal session proxy server of the plurality of proxy servers, for a session. (Specification, pg. 18, ln. 7 through pg. 19, ln. 21).

As to dependent claim 2, the apparatus 204 includes at least one browser 232 having a per session multi-modal proxy evaluator and a browser proxy identifier. The browser 232 is operably coupled to the controller 236 and the selected one of the plurality of multi-modal session proxy servers 226 and the browser receives the multi-modal proxy identifier (FIG. 3, Specification, pg. 17, ln. 17 through pg. 18, ln. 6). The browser receives a multi-modal proxy identifier and the browser proxy identifier is evaluated by the multi-modal proxy evaluator on a per-session basis in response to the multi-modal proxy identifier.

As to dependent claim 6, and as shown in FIG. 3 for example, the controller 236 includes the load balancer 238. The controller determines the multi-modal proxy identifier of a plurality of proxy identifiers in response to the load balancer. (Specification, pg. 18, lns. 7-19).

13

As to independent claim 19 and as shown in FIG. 5, a method for multi-modal communication is disclosed that includes receiving a multi-modal proxy identifier, on a per session basis, for a browser based on a selection from a plurality of multi-modal proxy servers as shown in block 306 (Specification, pg. 23, ln. 12 through pg. 25, ln. 13). The method also includes as shown in block 308 of FIG. 5, evaluating, on a per session basis, a browser proxy identifier in response to receiving the multi-modal proxy identifier. The method also includes, as shown in block 310 of FIG. 5, sending an information request using a first mode via a multi-modal session proxy server identified by the multi-modal proxy identifier. The method also includes receiving a reply to the request in a second mode using the proxy server. (Specification, pg. 28, lns. 1-22 and FIG. 8).

Independent claim 26 is directed to a method for multi-modal communication (see FIG. 5-8). The method includes selecting one of a plurality of multi-modal session proxy servers, on a per session basis (FIG. 5, Specification, pg. 23, lns. 12-20); providing, on a per session basis, a multi-modal proxy identifier of the selected one of the plurality of multi-modal proxy identifiers to a browser (FIG. 3, FIG. 5, Specification, pgs. 24-25); and determining a multi-modal session proxy server, on a per session basis, further comprising: accessing a load balancer, wherein the load balancer is operably coupled to a controller; and determining the multi-modal session proxy server, by the controller, on the per session basis in response to accessing the load balancer. As shown, the operation of determining a multi-modal session proxy server on a per session basis includes accessing a load balancer, wherein the load balancer is operably coupled to a controller as shown in block 356 of FIG. 6, and determining the multi-modal session proxy server, by the controller, on the per session basis in response to accessing the load balancer as shown in block 358 of FIG. 6 (see Specification, pg. 25, ln. 14 through pg. 26, ln. 22).

14

15

VI.   <u>GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL</u>

Claims 1-3, 6, 19-21, 26 and 28-30 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2002/0194388 (**Boloker** et al.).

VII.   ARGUMENT

In order for a reference to anticipate a claim, the office action must show that each and every limitation is found either expressly or inherently in a single prior art reference. *Net MoneyIN, Inc. v. Verisign, Inc.*, 545 F.3d 1359 (Fed. Cir. 2008). *Sanofi-Synthelabo v. Apotex, Inc.*, 470 F.3d 1368, 1375 (Fed. Cir. 2006), *reh'g and reh'g en banc denied* (Jan. 19, 2007) (citing *Celeritas Techs. Ltd. v. Rockwell Int'l Corp.*, 150 F.3d 1354, 1361 (Fed. Cir. 1998)) (single reference did not disclose all limitations of the claim); see also *In re: Bond*, 910 F.2d 831 (Fed. Cir. 1990).

    1.   INDEPENDENT CLAIMS 1, 19 AND 26 ARE NOT DISCLOSED IN THE SINGLE BOLOKER ET. AL REFERENCE

Claims 1-3, 6, 19-21, 26 and 28-30 stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by publication number 2002/0194388 (Boloker et al.). In the final office action, the rejection as to independent claims 1 and 26 with respect to the controller states in its entirety that "Boloker teaches…a controller operative to select one or more of a plurality of multi-modal session proxy servers (paragraphs [0095], [0101-0102]; and [0140-0142])" (page 4 of final action). However, this citation does not identify any corresponding structure alleged to correspond to the claimed controller. At best, the citation refers to and uses the words "collections of controllers" and "controller" (middle of paragraph 95 and paragraph 101) which in fact are defined in paragraph 101 as "controller such as channel specific browsers (e.g., WAP browser…, web/HTML browser, C-HTML browser…)". As such, the cited portion refers to a controller as only being a web browser.

Such an interpretation of a controller being a web browser is inconsistent both with respect to the claims and the specification. The specification describes and shows the controller 236 as separate from the browser 232 and operative to select one or more of a plurality of multi-

17

modal session proxy servers 226 (Specification, pg. 18 lns 7-pg. 19 ln. 4). Also, Claim 2 which depends on claim 1 states:

> at least one browser having a per session multi-modal proxy evaluator and a browser proxy identifier, wherein <u>the browser is operably coupled to the controller</u>…(emphasis added)

An item cannot be coupled to itself. Accordingly, the Examiner has made clear error in the claim interpretation that the claimed controller in claim 1 is a web browser since a web browser cannot be coupled to itself and the specification does not support the interpretation. Appellants also respectfully note that the cited portion makes no reference to a plurality of multi-modal session proxy servers. The rejection must be reversed.

Moreover, the claimed controller of claim 1 is "operative to select one or more of a plurality of multi-modal session proxy servers". Also as required in claim 1 the plurality of multi-modal session proxy servers (e.g., 226) each have a proxy address and the controller (e.g. 236) determines, on a per session basis, which of the plurality of multi-modal proxy identifiers represents a proxy address of a selected multi-modal session proxy server with a plurality of proxy servers. Nowhere in the cited paragraphs do the browser "controllers" (which are actually browsers in the Boloker reference) select one or more of a plurality of multi-modal session proxy servers based on multi-modal proxy identifiers as required by the claim. Under 35 U.S.C. §102, the reference must teach each and every limitation in the claim. Applicant is unable to find any mention of any of the operations of claim 1 cited in the cited paragraphs.

The office action cites paragraphs 0077, 223, 132, 145 and 232-235 as allegedly teaching that the controller of FIG. 1which is alleged to be a browser, determines which of a plurality of multi-modal proxy identifiers represent the proxy address of a selected multi-modal session proxy server. Applicant respectfully submits that the cited paragraphs do not describe that the

18

browser or controller of FIG. 1 does any of the operations set forth in the paragraph. To the contrary, paragraph 132 refers to the "application" and not to the controller. No "proxy servers" are mentioned in the sited paragraph and the rejection is silent as to which information in Boloker corresponds to the multi-modal session proxy servers as claimed. For example, paragraph 232 refers instead to a multi-modal shell that supports an application yet the office action cites to paragraph 132 which refers to an application. The multi-modal shell is also not described as having the claimed controller. Not only are multiple multi-modal session proxy servers required – each having their own proxy address – but the controller determines, for each session, which of the plurality of multi-modal proxy servers are to be selected from the group of session proxy servers and determines the identifier for the selected multi-modal proxy from the group. This dynamic multi-modal session proxy determination is not taught or suggested by the cited portions of Boloker.

As to independent method claim 19, Appellant respectfully reasserts the relevant remarks made above. Since the reference does not teach what is alleged, and since the claims have been improperly construed Appellant respectfully submits that the Examiner has committed clear error and the rejection must be reversed.

Also as to independent claim 26, there is an error in the rejection on page 7 of the final office action which states:

> Claims 19 and 26 incorporate substantially all the limitations of claims 1-3 with minor variation in the claimed language in method form, rather in apparatus form. The reasons for the rejection of claim 1-3 apply to claims 19 and 26.

However, claim 26 is directed to a controller that determines the selected proxy identifier in response to how much load a session proxy can accommodate and requires, inert alia, determining a multi-modal session proxy server, on a per session basis, further comprising:

19

accessing a load balancer, wherein the load balancer is operably coupled to a controller; and determining the multi-modal session proxy server, by the controller, on the per session basis in response to accessing the load balancer (see claim 26). None of claim 1-3 includes language dealing with selecting a multi-modal session proxy based on a load balancer. Accordingly there is not a prima facie anticipation rejection of claim 26 and the rejection must be reversed.

2. DEPENDENT CLAIMS 2 AND 6 ARE NOT DISCLOSED IN THE SINGLE BOLOKER REFERENCE

As to claim 2, the same apparatus not only includes the controller and selection of one of a plurality of multi-modal session proxy servers on a per session basis and determines which of the proxy identifiers represent the selected proxy address of the proxy server for the session. Claim 2 also requires that the same apparatus include a browser that has a per session multi-modal proxy evaluator and a proxy ID. The browser receives the multi-modal proxy identifier and the proxy identifier is evaluated by the multi-modal proxy evaluator on a per session basis in response to the multi-modal proxy identifier and the browser is coupled to the controller. Accordingly, a dynamic per session multi-modal session proxy server selection operation can be done by a browser as opposed to a static network proxy operation.

The office action cites FIGs. 23 and 25 along with paragraphs 82, 102, 182, 206 and 233-235 as allegedly teaching this subject matter. The office action states that Boloker teaches a multi-modal shell acting as a browser coordinator to support a multiple authoring framework that uses synchronization tags. However, Appellants are unable to find teachings in the cited portion where the browser, which is also referred to as a controller as noted above, in Boloker, evaluates a per session multi-modal proxy identifier and evaluates its own browser proxy ID with the multi-modal proxy identifier. Appellants are unable to find where in the cited portions the browser, such as browser 225 in FIG. 25, for example includes the multi-modal proxy evaluator

20

wherein its own proxy ID is evaluated by the browser itself along with the selected one of the plurality of multi-modal session proxy servers (its multi-modal proxy identifier). The office action appears to misconstrue the teachings of the reference. The Final Action refers to a "modal view controller" (page 5 of Final Action) where in fact the reference actually refers to a "model–view–controller paradigm". A paradigm is not a browser. (See paragraph 0094). A model-view-controller paradigm as described in Boloker uses a model that comprises a channel independent description of the application, each channel comprises a view of the model, and the views are obtained by transforming the model representation into its target form which is rendered by controllers or browsers. It appears that the teachings of the reference may have been misapprehended. By way of further example, the office action appears to use the acronym "MVC" as some kind of thing or structure since it states "the browser is a voice browser which is connected to the MVC..." (page 5 of office action). As is clear from Boloker the model-view-controller paradigm is not a device but is a paradigm which is used to describe how an application and browser and channels are interrelated citing a paradigm as the claimed structure is reversible error. Since the reference does not teach what is alleged, Appellants respectfully submit that the claims are in condition for allowance.

As to claim 6 the controller requires a load balancer (e.g., see FIG. 4 of Appellants' Specification) and determines the selected proxy identifier in response to how much load a session proxy can accommodate. The office action sites to paragraphs 0109, 0226 and 0245 as specifically teaching this subject matter. However, the cited portion of paragraph 0109 refers to something different. It refers to a future desire to synchronize views from a single authoring paradigm based on a "network load." In contrast, the claim requires that the controller determines the per session multi-modal proxy identifier from a plurality of possible session

21

proxies in response to the load balancer of the controller. No such controller or specific session proxy load balancing operation appears to be set forth in the cited portions. Accordingly, the rejection must be reversed.

For purpose of this Appeal, the remaining dependent claims are allowable at least as depending upon an allowable base claim as indicated above.

VIII.   CONCLUSION

For the reasons advanced above, Appellants submit that the Examiner erred in rejecting pending claims 1-3, 6, 19-21, 26 and 28-30 and respectfully requests reversal of the decision of the Examiner.

Respectfully submitted,

Date: December 7, 2009   By:___/Christopher J. Reckamp/
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1.   An apparatus for multi-modal communication comprising:

a controller operative to select one or more of a plurality of multi-modal session proxy servers; and

the plurality of multi-modal session proxy servers each having a proxy address, wherein the controller determines, on a per session basis, which of a plurality of multi-modal proxy identifiers represents the proxy address of a selected multi-modal session proxy server of the plurality of proxy servers.

2.   The apparatus of claim 1 further comprising:

at least one browser having a per session multi-modal proxy evaluator and a browser proxy identifier, wherein the browser is operably coupled to the controller and the selected one of the plurality of multi-modal session proxy servers such that the browser receives the multi-modal proxy identifier and the browser proxy identifier is evaluated by the multi-modal proxy evaluator, on a per session basis, in response to the multi-modal proxy identifier.

3.   The apparatus of claim 1 further comprising:

at least one voice browser having a voice browser per session multi-modal proxy evaluator and a voice browser proxy identifier, wherein the voice browser is operably coupled to the controller and the selected one of the plurality of multi-modal session proxy servers such that the voice browser receives the multi-modal proxy identifier and the voice browser proxy

identifier is evaluated by the voice browser per session multi-modal proxy evaluator, on a per session basis, in response to the multi-modal proxy identifier; and

at least one graphical browser having a graphical browser per session multi-modal proxy evaluator and a graphical browser proxy identifier, wherein the graphical browser is operably coupled to the controller and the selected multi-modal session proxy server such that the graphical browser receives the multi-modal proxy identifier and the graphical browser proxy identifier is evaluated by the graphical browser per session multi-modal proxy evaluator, on a per session basis, in response to the multi-modal proxy identifier.

6.   The apparatus of claim 1 wherein the controller further comprises at least one load balancer, whereupon the controller determines the multi-modal proxy identifier of a plurality of multi-modal proxy identifiers in response to the at least one load balancer.

19.   A method for multi-modal communication comprising:

receiving a multi-modal proxy identifier, on a per session basis, for a browser based on a selection from a plurality of multi-modal proxy servers;

evaluating, on a per session basis, a browser proxy identifier in response to receiving the multi-modal proxy identifier;

sending an information request using a first mode via a multi-modal session proxy server identified by the multi-modal proxy identifier; and

receiving a reply to the request in a second mode using the proxy server.

20.   The method of claim 19 further comprising:

APPENDIX A

fetching requested information from at least one content server; and

providing the requested information to the browser.

21.   The method of claim 20 further comprising:

prior to sending an information request, storing an updated browser proxy identifier in a memory location.

26.   A method for multi-modal communication comprising:

selecting one of a plurality of multi-modal session proxy servers, on a per session basis;

providing, on a per session basis, a multi-modal proxy identifier of the selected one of the plurality of multi-modal proxy identifiers to a browser; and

determining a multi-modal session proxy server, on a per session basis, further comprising:

accessing a load balancer, wherein the load balancer is operably coupled to a controller; and

determining the multi-modal session proxy server, by the controller, on the per session basis in response to accessing the load balancer.

28.   The method of claim 26 further comprising:

prior to determining a multi-modal session proxy server, on a per session basis, initiating a multi-modal session between a terminal and a multi-modal network element.

29.   The method of claim 28 further comprising:

APPENDIX A

evaluating, on a per session basis, a browser proxy identifier in response to receiving the multi-modal proxy identifier; and

receiving an information request from the browser to the multi-modal session proxy server identified by the multi-modal proxy identifier.

30.   The method of claim 28 further comprising:

fetching requested information from a content server; and

providing the requested information to the browser.

EVIDENCE APPENDIX

[NONE]

APPENDIX B

RELATED PROCEEDINGS

[NONE]